

the relevant jurisdictions, and be authorized by the appropriate foreign licensing authority.

(b) *Legal framework.* A derivatives clearing organization shall operate pursuant to a well-founded, transparent, and enforceable legal framework that addresses each aspect of the activities of the derivatives clearing organization. As applicable, the framework shall provide for:

(1) The derivatives clearing organization to act as a counterparty, including novation;

(2) Netting arrangements;

(3) The derivatives clearing organization's interest in collateral;

(4) The steps that a derivatives clearing organization would take to address a default of a clearing member, including but not limited to, the unimpeded ability to liquidate collateral and close out or transfer positions in a timely manner;

(5) Finality of settlement and funds transfers that are irrevocable and unconditional when effected (no later than when a derivatives clearing organization's accounts are debited and credited); and

(6) Other significant aspects of the derivatives clearing organization's operations, risk management procedures, and related requirements.

(c) *Conflict of laws.* If a derivatives clearing organization provides clearing services outside the United States:

(1) The derivatives clearing organization shall identify and address any material conflict of law issues. The derivatives clearing organization's contractual agreements shall specify a choice of law.

(2) The derivatives clearing organization shall be able to demonstrate the enforceability of its choice of law in relevant jurisdictions and that its rules, procedures, and contracts are enforceable in all relevant jurisdictions.

§§ 39.28—329.29 [Reserved]

Subpart C—Provisions Applicable to Systemically Important Derivatives Clearing Organizations and Derivatives Clearing Organizations That Elect To Be Subject to the Provisions of This Subpart

SOURCE: 78 FR 72514, Dec. 2, 2013, unless otherwise noted.

§ 39.30 Scope.

(a) The provisions of this subpart apply to each of the following: a subpart C derivatives clearing organization, a systemically important derivatives clearing organization, and any derivatives clearing organization, as defined under section 1a(15) of the Act and § 1.3(d) of this chapter, seeking to become a subpart C derivatives clearing organization pursuant to § 39.31.

(b) A systemically important derivatives clearing organization is subject to the provisions of subparts A and B of this part in addition to the provisions of this subpart.

(c) A subpart C derivatives clearing organization is subject to the provisions of subparts A and B of this part in addition to the provisions of this subpart except for §§ 39.41 and 39.42.

§ 39.31 Election to become subject to the provisions of this subpart.

(a) *Election eligibility.* (1) A derivatives clearing organization that is registered with the Commission and that is not a systemically important derivatives clearing organization may elect to become a subpart C derivatives clearing organization subject to the provisions of this subpart, using the procedures set forth in paragraph (b) of this section.

(2) An applicant for registration as a derivatives clearing organization pursuant to § 39.3 may elect to become a subpart C derivatives clearing organization subject to the provisions of this subpart as part of its application for registration using the procedures set forth in paragraph (c) of this section.